IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5853 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DENA BANK

Versus

K.T.PATEL

Appearance:

1. Special Civil Application No. 5853 of 1991

MR PRASHANT G DESAI for the Petitioner

MR TR MISHRA for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 23/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner - Dena Bank (hereinafter referred to as "the Bank") challenges the judgment and award dated 28th September, 1990 passed by the Central Industrial Tribunal (hereinafter referred to as "the Tribunal") in Reference (ITC) No.14/1988.

The respondent (hereinafter referred to as "the workman") was, at the relevant time, serving as Cashier-cum-Clerk in Bhadran Branch of the Bank. On 15th June, 1983, on physical verification, a deficit of Rs.5,000=00 was found in the cash balance. The said deficit was made good by the workman immediately on the same day. Pursuant to the said incidence the workman was placed under suspension. A disciplinary proceeding was initiated against the workman on 18th June, 1983. The workman was alleged to have misappropriated the said sum of Rs.5,000=00. After disciplinary proceeding, by order dated 1st July, 1986, the workman was dismissed from service. The order of dismissal was confirmed by the appellate authority. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Tribunal. The Tribunal allowed the claim made by the workman. The Tribunal set aside the order of dismissal dated 1st July, 1986, directed the Bank to reinstate the workman in service, to pay arrears of wages, to pay the sum of Rs.5,000=00 recovered from the workman with interest @ 12% per annum and the cost. Feeling aggrieved, the Bank has preferred the present petition under Article 227 of the Constitution of India.

Learned advocate Mr.Desai has submitted that the imputation of charge made against the workman was proved after holding due departmental enquiry. The workman had been given a charge-sheet. He had been given adequate opportunity of defence by filing his reply, by cross-examining the witnesses of the Bank, by examining himself and his witnesses, if any. He had been given opportunity to answer the finding of guilt recorded against him. Thus, the disciplinary proceeding was held in consonance with the relevant rules and the principles of natural justice and fair play. The workman also conceded before the Tribunal that the disciplinary proceeding was conducted in consonance with the rules and the principles of natural justice and fair play. The workman expressly by writing Ex.11 forgo the challenge to the disciplinary proceeding. He has submitted that before the Tribunal the workman and the Bank relied upon the record of the disciplinary proceeding and did not lead oral evidence. Nevertheless, the Tribunal has held that the Bank had failed to prove the imputation of

charge made against the workman by leading evidence before the Tribunal. Thus, the workman was deprived of opportunity to refute the charge levelled against him. Mr.Desai has submitted that this approach of the Tribunal is totally perverse. Admittedly, both the parties relied upon the record of the disciplinary proceeding alone. In course of the disciplinary proceeding the concerned officers of the Bank were examined by the Bank and were cross-examined by the workman. Hence, the workman cannot be said to have been deprived of the opportunity to refute the charge levelled against him. Mr.Desai has also submitted that the Tribunal has transgressed its jurisdiction in holding that the imputation of charge made against the workman was not proved, that there was no deficit in cash as alleged, that the workman was victimised with malafide intention. He has submitted that indisputably the workman was the Cashier in-charge of the cash; cash in his hand was found to be deficit by Rs.5,000=00; the workman made good the deficit of cash on the same day by depositing a sum of Rs.5,000=00. The workman could not give proper or satisfactory explanation for deficit in cash. It was the workman who was responsible to account for the cash balance. In absence of satisfactory explanation, the only reasonable inference can be that of misappropriation of the said sum by the workman. The Tribunal has erred in holding that the Bank had failed to rule out the possibility of misappropriation of the said sum by Shri G.R.Shah, the Accountant, who verified the cash balance at the end of the banking hours, or Shri Waland, the Peon, who had stitched the bundles. Mr.Desai has submitted that the power of the Tribunal under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") is not that of an appellate authority/court. The Tribunal was not supposed to interfere with each and every finding recorded by the Bank. He has submitted that the reasoning of the Tribunal cannot be sustained. The impugned judgment and award, therefore, deserve to be quashed and set aside. The claim made by the workman requires to be rejected. In support of his argument, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Christian Medical College Hospital Employees' Union and another v/s. Christian Medical College Vellore Association and others [(1987)4 SCC 691].

Learned advocate Mr.Mishra had contested the petition. Mr.Mishra has extensively read out the evidence before the disciplinary authority. He has submitted that the workman was victimised. It was the Peon Shri Waland who had stitched the bundles of currency notes. It was, therefore, the duty of the Bank to rule

out the possibility of misappropriation of the cash by the said Shri Waland. He has submitted that the Tribunal has rightly exercised its jurisdiction and has recorded finding in favour of the workman. The said order does not warrant interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

The Hon'ble Supreme Court has, in the matter of Christian Medical College Hospital Employees' Union (supra), succinctly considered the scope of the Industrial Tribunal and the Labour Court. It is observed that "...Secondly, the circumstances in which the Industrial Tribunal or the Labour Court may set aside the decision arrived at by the management in the course of a domestic enquiry held by the management into an act of misconduct of a workman are evolved by a series of judicial decisions. In Indian Iron & Steel Co. Ltd. v. Workmen this Court has observed that the powers of an industrial tribunal to interfere in cases of dismissal of a workman by the management are not unlimited and the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management. It will interfere (a) where there is want of good faith; (b) when there is victimisation or unfair labour practice; (c) when the management has been guilty of the basic error or violation of the principles of natural justice; and (d) when on the materials before the court the finding is completely baseless or perverse. It cannot, therefore, be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry."

I do agree with learned advocate Mr.Desai. It was not disputed that the workman was the Cashier and was in-charge of the cash. There was no dispute that there was a deficit of Rs.5,000=00 in the cash balance at the end of the banking hours. The calculation sheet (Management Ex.1, page-84) clearly indicates several corrections and interpolations made by the workman and initialed by him. The endorsement made by the Accountant Shri G.R.Shah at 3:30 p.m. shows a deficit in cash balance by Rs.5,000=00 i.e. 100 currency notes of Rs.50=00 each. No immediate explanation was given by the workman for the said loss. At no point of time it was his case that bundles of currency notes were given to Shri Waland for stitching and the loss was found at that time. On the contrary, in reply to the charge-sheet he made counter allegations against the Accountant Shri

G.R.Shah that the said Shri Shah had siphoned away the missing currency while counting the cash balance. The evidence on record does suggests that the cash balance was counted by the said Shri Shah in presence of the workman in his cabin. After a deficit of Rs.5,000=00 was noticed the cash was recounted by the said Shri Shah at his seat. At the time of the said recounting the workman was not present. However, as the deficit was noticed at the very first counting of cash balance in the presence of the workman, want of presence of the workman at the time of recounting would be of no consequence. In my view, the finding recorded by the Tribunal that there was no loss of cash at all is totally perverse. It was not even the case of the workman before the disciplinary authority or before the Tribunal that the alleged deficit in the cash balance was make-believe and that there was no actual deficit in cash balance. The finding of victimisation on the basis of some dispute with respect to the amount of subsistence allowance is also not sustainable. The workman, having forgone the challenge to the disciplinary proceeding, the Tribunal has erred in holding that the Bank had failed to examine its officers before the Tribunal; had the said officers been examined before the Tribunal, the workman would have an opportunity to cross-examine them and thus would have been offered due opportunity to prove his defence. The Tribunal has overlooked the fact that the Bank had examined its officers including the aforesaid Shri G.R.Shah and Shri Waland in the disciplinary proceeding and both the said witnesses were cross-examined by the workman. The Tribunal has also held that pursuant to the incidence in question the workman was demoted to the lower post (Junior Clerk). The workman suffered loss of allowance of Rs.105=00 as Cashier. Thus, for the said incidence the workman had suffered double jeopardy; first by the loss of allowance as aforesaid and then by punishment of dismissal from service. This approach of the Tribunal is also perverse. Loss of allowance as Cashier cannot be said to be a punishment imposed for the alleged act of misappropriation.

In above view of the matter, I am of the view that the findings recorded by the Tribunal are perverse and are contrary to the evidence on record. The Tribunal has transgressed its jurisdiction in upsetting the finding recorded by the disciplinary authority and in substituting the finding of its own.

In the present case the workman filed his statement of claim on 16th August, 1988. In the said statement of claim the workman challenged the enquiry

proceeding being opposed to the principles of natural justice. He also challenged the punishment having been disproportionate, harsh and made without the application of mind; that the workman had not been given reasonable opportunity in the departmental enquiry i.e. the workman did not challenge the finding of guilt recorded against him. The workman having given-up his challenge to the disciplinary proceeding the Tribunal was not called upon to examine the evidence on record, to appreciate the same and to record the finding of its own. Thus, the Tribunal usurped the jurisdiction not vested in it.

The workman being a Cashier was required to deal with the cash. Thus, he held the position of trust. Loss of cash of any denomination would amount to breach of trust. For commission of the acts involving financial irregularity amounting to breach of trust, the punishment of dismissal from service can be the only appropriate punishment. The same cannot be said to be disproportionate or harsh. The Tribunal, therefore, ought not to have interfered with the disciplinary proceeding and the consequent punishment imposed upon the workman.

In view of the above discussion, the petition is allowed. The impugned judgment and award dated 28th September, 1990 passed by the Central Industrial Tribunal in Reference (ITC) No.14/1988 is quashed and set aside. The claim made by the workman stands rejected. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)

/sakkaf